

MONTANA LEGISLATIVE HISTORY

Chapter 42 19 81

Bill H _____ S 27

Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) Mar 03 ☒ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Jan 06 ☒ C

Jan 08 ☒ C

_____ C

_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 3/25/81
ACTION: 3/30, SIGNED
CHAPTER 167

SB 27 -- S. BROWN -- AMENDING 7-32-2121 TO CHARGE SHERIFF WITH DUTY OF SUPERVISING SEARCH AND RESCUE.

PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80
HEARING: 1/8
REPORT: 1/8, DO PASS
PLACED ON CONSENT CALENDAR, DISCUSSION: 1/10
3RD READING: 1/12, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 1/12
INTRODUCED: 1/13
REFERRED TO COMMITTEE ON JUDICIARY: 1/13
HEARING: 3/3
REPORT: 3/3, BE CONCURRED IN
2ND READING: 3/5, YEAS: 87; NAYS: 3
3RD READING: 3/7, YEAS: 87; NAYS: 7

RETURNED TO SENATE: 3/7
TRANSMITTED TO GOVERNOR: 3/9/81
ACTION: 3/12, SIGNED
CHAPTER 42

SB 28 -- HAZUREK -- TO REVISE THE PROCEDURE FOR DECLARING AN OFFICE FORFEITED....

PREFILED AND REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 12/30/80
HEARING: 1/6
REPORT: 1/7, DO PASS
2ND READING: 1/9, YEAS: 44; NAYS: 3
3RD READING: 1/12, YEAS: 46; NAYS: 2

TRANSMITTED TO HOUSE: 1/12
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/13
HEARING: 3/3
REPORT: 3/4, BE CONCURRED IN
2ND READING: 3/5, YEAS: 95; NAYS: 4
3RD READING: 3/7, YEAS: 93; NAYS: 2

RETURNED TO SENATE: 3/7
TRANSMITTED TO GOVERNOR: 3/9
ACTION: 3/12, SIGNED
CHAPTER 43

SB 29 -- HAGER -- TO PROHIBIT PERSONS WHO ESTABLISH RESIDENCE NEAR AGRICULTURAL OR FARMING OPERATIONS, ETC., FROM BRINGING NUISANCE SUITS....

PREFILED AND REFERRED TO COMMITTEE ON JUDICIARY: 12/30/80
HEARING: 2/12
REPORT: 2/16, DO PASS AS AMENDED
2ND READING: 2/18, DO PASS
3RD READING: 2/20, YEAS: 48; NAYS: 0

TRANSMITTED TO HOUSE: 2/20
REFERRED TO COMMITTEE ON JUDICIARY: 2/21
HEARING: 3/3
REPORT: 3/3, BE CONCURRED IN AS AMENDED
ON MOTION, 3/5, PASSED FOR THE DAY.
2ND READING: 3/6, YEAS: 74; NAYS: 15

SENATE BILL NO. 27

INTRODUCED BY S. BROWN

IN THE SENATE

January 5, 1981

Introduced and referred to
Committee on Judiciary.

January 8, 1981

Committee recommend bill
do pass and be placed on
consent calendar. Report
adopted.

January 9, 1981

Bill printed and placed on
members' desks.

January 10, 1981

Consent calendar discussion.

January 12, 1981

Consent calendar, do pass.
Transmitted to House.

IN THE HOUSE

January 13, 1981

Introduced and referred to
Committee on Judiciary.

March 4, 1981

Committee recommend bill
be concurred in. Report
adopted.

March 5, 1981

Second reading, concurred in.

March 7, 1981

Third reading, concurred in.
Yeas, 87; Nays, 7.

IN THE SENATE

March 7, 1981

Returned from the House.
Concurred in. Sent to
enrolling.

Reported correctly enrolled.

1 SENATE BILL NO. 27
2 INTRODUCED BY S. BROWN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE
5 COUNTY SHERIFF IS THE LEGAL OFFICER IN CHARGE OF THE
6 OPERATIONS OF SEARCH AND RESCUE UNITS; AMENDING SECTION
7 7-32-2121, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 Section 1. Section 7-32-2121, MCA, is amended to read:
11 "7-32-2121. Duties of sheriff. The sheriff must:
12 (1) preserve the peace;
13 (2) arrest and take before the nearest magistrate for
14 examination all persons who attempt to commit or have
15 committed a public offense;
16 (3) prevent and suppress all affrays, breaches of the
17 peace, riots, and insurrections which may come to his
18 knowledge;
19 (4) perform the duties of a humane officer within the
20 county with reference to the protection of dumb animals;
21 (5) attend all courts, except municipal, justices', and
22 city courts, at their respective terms or sessions held
23 within the county and obey their lawful orders and
24 directions;
25 (6) command the aid of as many inhabitants of the

1 county as are necessary in the execution of the sheriff's
2 duties;
3 (7) take charge of and keep the county jail and the
4 prisoners therein;
5 (8) endorse upon all notices and process the year,
6 month, day, hour, and minute of reception and issue therefor
7 to the person delivering them, on payment of fees, a
8 certificate showing the names of the parties, the title of
9 the paper, and the time of reception;
10 (9) serve all process or notices in the manner
11 prescribed by law;
12 (10) certify in writing upon the process or notices the
13 manner and time of service or, if he fails to make service,
14 the reasons of this failure, and return the papers without
15 delay;-and
16 (11) take charge of and supervise search and rescue
17 units and their officers whenever search and rescue units
18 are called into service; and
19 ~~+++~~(12) perform such other duties as are required by
20 law."
21 NEW SECTION. Section 2. Search and rescue units under
22 control of county sheriff. Except in time of martial rule as
23 provided in 10-1-106, search and rescue units and their
24 officers are under the operational control and supervision
25 of the county sheriff having jurisdiction.

LC 0145/01

1 Section 3. Codification instruction. Section 2 is
2 intended to be codified as an integral part of Title 7,
3 chapter 32, part 2, and the provisions of Title 7, chapter
4 32, part 2, apply to section 2.

-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 6, 1981

page 1.

The first meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 8:04 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL NO. 8:

Senator Fred Van Valkenburg, sponsor of this bill, explained that it would change the maximum period for a deferred sentence from three to five years, and would dictate a change in Line 18, Page 1 of the bill. The purpose of the bill is to increase use of the deferred sentence, which has been a successful tool in the sentencing and correction process in Montana. Deferred sentencing is a positive incentive for a person to successfully complete parole without violation. Eighty-five to ninety percent of all people who receive deferred sentences go through their deferred period successfully. It was initially used in misdemeanor drug cases, and has worked so well that judges have expanded it into other areas. It is primarily, although not exclusively, limited to crimes of a non-violent nature.

The need to increase the maximum deferred sentence from three to five years exists because often a substantial amount of restitution is assessed against a defendant; and in order for him to have the time to collect the amount, an extension must be made. In addition, many eighteen-year-olds are involved with this, and they need the additional time to mature. In 1967, when deferred sentencing was adopted, the majority age was twenty-one, and the three year deferment took the person involved to the age of twenty-four. Now, with a majority age of eighteen, the defendant is still only twenty-one when the sentence expires.

There were no further proponents of the bill, and no opponents.

CONSIDERATION OF SENATE BILL 27:

Senator S. Brown, sponsor of this bill, explained that the bill would clarify who should have control of a search and

rescue team when they are called out to perform their services. He stated that this bill would provide that the sheriff would have the authority to direct their efforts, with the exception of times of martial rule, which has been covered by separate legislation.

John Scully, representing the Sheriffs and Peace Officers Association, stated that search and rescue associations were formed usually because no similar help was available within an area. In recent years, he said, they have allowed volunteer peace officers to aid in times of increased burden. There has been no figure authorized to direct these undertakings. He feels that someone should be in charge, with authority to direct operations, so that future questions of authority would be eliminated.

Chuck O'Reilly, Lewis & Clark County Sheriff, testified that he was primarily concerned that there was no statutory reference made to authority over operations. The present law, he said, is simply not clear enough as to who has the right to authority. Should a private group choose to come in and take over, they would have very little access to special law enforcement groups; they could conceivably contaminate the scene of a crime, in instances where a crime has been committed; and they would not have access to short wave radios unless they operated them under his license.

Joe Mazurek asked if there presently existed any instances where the search and rescue would be called into service without the sheriff's office's involvement, and whether, in writing this proposed bill, there should be allowance made for any such instances. O'Reilly replied that no such situation existed.

Mike Steven, representing the Association of Counties, spoke in support of the bill.

There were no further proponents of the bill and no opponents, and the witnesses left the meeting.

Chairman Mike Anderson then introduced David Niss to the committee as their staff counsel, and outlined the ways in which David could assist committee members. Anderson requested that all requests by committee members for research go through the chairman.

Chairman Anderson asked his committee to discuss at this time any procedural changes they would like to see made in the conduct of future committee meetings. Senator Olson suggested that he call for all proponents, then all opponents, and only then ask for questions, which would all have to be directed,

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 8, 1981

Page 1.

The second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date, in Room 331, at 10:01 a.m.

ROLL CALL:

All members were present, with the exception of Senator Bob Brown, who was excused.

CONSIDERATION OF SENATE BILL NO. 36:

TO PROVIDE A METHOD FOR DISTRICT COURT
JUDGES AS EX OFFICIO PROBATE JUDGES TO
ISSUE DEEDS FOR ENTRY TOWNSITE LOTS THAT
WERE NOT ORIGINALLY ISSUED OR WERE LOST.

Chairman Anderson introduced Senator Pat Goodover, sponsor of the bill, who explained that he had sponsored SB 36 at the request of the Code Commissioner. He stated that the purpose of the bill was to allow titles to be cleared on parcels of land that were settled under an act similar to the Homestead Act, but had never had the owner's title of deed legally established. Because of the many legal aspects involved in this bill, Senator Goodover introduced Lee Heiman to discuss it further.

Mr. Heiman stated that the bill would correct a problem of townsites homesteaded where the deed was given to the district court judge. At the time of homesteading, when a person had been on the land for six months or more he could get a patented deed from the district judge. As many of the townsites involved gradually lost population, the few remaining residents picked up most of the land around them, but the original lots they occupied never were legally in their name. This bill would again allow the judge to turn over title to the deed.

No opponents to the bill were present.

DISPOSITION OF SENATE BILL 27:

Chairman Mike Anderson then turned the committee's attention to Senate Bills 8 and 27, pending from Tuesday's meeting. Acting first upon Senate Bill 27, Senator Anderson asked if there were further questions or comments. There being none, Senator S. Brown recommended that the bill receive a DO PASS,

which was seconded and unanimously carried. Senator S. Brown then moved to place Senate Bill 27 on the Consent Calendar. After an explanation that this was a method of eliminating the second reading vote on a bill of a non-controversial nature, Senator Brown's motion was seconded and carried unanimously.

DISPOSITION OF SENATE BILL 36:

Senator Anderson then suggested that since Senate Bill 36 had no opponents present, and was not of a controversial nature, a disposition be made on it at this meeting. Senator S. Brown moved that Senate Bill 36 DO PASS, a motion which was seconded and unanimously carried. Senator Brown then moved that it be placed on the Consent Calendar, and this motion was also seconded and carried unanimously.

CONSIDERATION OF SENATE BILL 8:

Senator Berg then quoted Senator Ryan, a Great Falls probation officer, as saying that Senate Bill 8 would possibly increase his load two-thirds simply by increasing the number of years he would be responsible for the individuals involved. It was then pointed out that because the additional two years would only apply to certain cases, and because the last two years of a probation period generally require a much more relaxed schedule than the early years do, probably the case officers' actual work load would not increase very much.

Senator Anderson then read a letter from Daniel D. Russell, Corrections Division of the Department of Institutions, concerning data on the number of deferred sentences being handled. This letter and its accompanying data sheet is marked "Exhibit A" of these minutes.

DISPOSITION OF SENATE BILL 8:

Senator Berg then moved that Senate Bill 8 receive a DO PASS; his motion was seconded, and passed unanimously.

Chairman Anderson then reminded the committee that it would be hearing Senate Bills 14, 24, and 40 on Friday, January 9. He further stated that it was his intention to have no meeting on Friday, January 16, and that there would be no regularly scheduled Saturday meetings.

There being no further business, the meeting adjourned.



Senator Anderson
Chairman, Judiciary Committee

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 3, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Iverson, who was excused and Rep. Teague, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 8 SENATOR VAN VALKENBURG, sponsor of the bill, stated this was to amend 46-18-201 to increase to five years the maximum period for deferred imposition of sentence for a felony. An interim committee on corrections policy and facility needs requested the bill. The maximum period for deferred imposition of sentence has been changed from three years to five years. If maximum deferment is increased there would be instances where judges would use the deferred sentence where they might not otherwise do so.

If theft is a person's first offense, it can be difficult to accomplish restitution of that money in a three year period. It is though that the opportunity to make restitution will be enhanced. It give the judge the ability to keep the person under supervision a longer period of time.

The positive incentive is getting a clean record with a deferred sentence.

There were no proponents.

There were no opponents.

SENATOR VAN VALKENBURG closed the bill.

REP. HANNAH asked if 18 year olds are primary applicants. The sponsor replied there is no age limit to the bill.

REP. KEEDY asked about a fiscal note. The Senator replied there is none. If the assumption is made that everyone who had a three year sentence would have a five year sentence that would be a false assumption. The judges do not use the deferred sentence as often as they could. This might help the individual and the community.

SENATE BILL 27 SENATOR S. BROWN, sponsor, stated this is to amend 7-32-2121 to charge the sheriff with the duty of supervising search and rescue operations in the field. It makes sense to have just one person in charge.

CHUCK O'REILLY, Montana Sheriffs & Peace Officers, was in support of the bill. Traditionally the sheriff's department has been in charge of these operations. However, there is nothing in the law that defines the sheriff is actually the one to be in charge. Private groups can come in and charge for their service. When a

private group is involved it is hard to say who is in charge of the two groups.

MIKE STEPHEN, Montana Association of Counties, supports the bill. Although this will cost the counties more money it will be a benefit. There has been a problem in the past where a family member is lost. Who actually says the search has been enough? There is a problem when a private organization comes in to search.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. EUDAILY asked who has the legal liability in these cases. O'REILLY stated currently the sheriff's department is liable and the bill would make the sheriff directly liable. The sheriff's department is the only agency opened 24 hours a day. The people call the sheriff when there is a problem. O'REILLY does not see an increase in funds needed if the bill is passed.

REP. EUDAILY asked if the sheriff's men have liability insurance. O'REILLY replied it is different in every county. They get some county funds, the rest is donations through fund drives.

REP. KEEDY asked under what authority are these people called to this. O'REILLY replied under the authority of the sheriff. Our power is very broad. The sheriff's department has the necessary resources including diving equipment, ropes, etc. A private helicopter and ambulance service are available free.

REP. KEEDY asked if in some counties search and rescue operations can be called other than through the sheriff's department. O'REILLY replied the sheriff is the chief law enforcement officer in the county.

REP. HANNAH asked if the sheriff's department can stop any search already in progress. O'REILLY replied they have that ability now. There have been instances where individuals have contracted with private groups. The sheriff's department was searching a river for a body. After three weeks with no sign of the body, they started a spot check method which went on for three months. The family hired people later on to walk the river and search. The sheriff's department cannot stop that as it is up to the family.

REP. HANNAH stated if total control were given to the department then it would seem we are also giving authority to begin and end searches. O'REILLY responded this bill is not changing anything. It is putting into effect what is practiced now.

be just to say that three years is given for an older person and five years is given for a young person.

REP. DAILY did not feel the committee should make deferred imposition easier. REP. HUENNEKENS replied the essential thing is we are making it harder.

REP. SEIFERT made a substitute motion to table the bill. The motion carried with YARDLEY, BENNETT, EUDAILY, and BROWN voting no.

SENATE BILL 24 REP. SEIFERT moved do pass.

The motion carried with BROWN and MCLANE voting no.

SENATE BILL 27 REP. SEIFERT moved do pass.

REP. HANNAH stated it needs to be clarified what happens if a member is called into service and they have to respond. REP. MATSKO replied as a member of the unit you say you will respond. If you don't you have stopped being in the unit.

REP. KEYSER stated search and rescue is formed for that. If they are called out that is where they will go. If they do, they are under the sheriff's supervision.

The committee asked Sheriff O'REILLY his opinion. O'REILLY stated it is a voluntary group. Work is coordinated with the sheriff's department. A roster is used to see who is available.

REP. HANNAH asked if this gives the sheriff that authority. O'REILLY replied that when the unit is formed the sheriff's department makes a call saying they would like volunteers to respond. The sheriff's department cannot force them to go.

REP. ANDERSON asked about abandoning a search. O'REILLY replied a sheriff could not stop a person from abandoning or continuing a search as long as he was not in violation of the law.

REP. HANNAH asked if the sheriff's department has jurisdiction inside the city limits. It was replied yes. The sheriff is the chief law enforcer in the county.

REP. KEEDY moved following "whenever" on line 17 page 2 to strike through "service" on line 18 and to insert "their services are requested by him". The motion failed with only HANNAH, BENNETT, EUDAILY and KEEDY voting for the amendment.

REP. SHELDEN made a motion to insert on line 18, page 2 "or volunteer for" after "into". The motion failed.

REP. KEEDY was convinced if this bill is passed the sheriff's office will be burdened with legal liability whenever they have to go out.

The motion of do pass carried with KEEDY, HANNAH, EUDAILY, and MCLANE voting against the motion.

SENATE BILL 36 REP. KEEDY moved do pass.

REP. KEEDY moved to postpone action on the bill until an amendment was drawn up. The motion carried.

SENATE BILL 29 REP. MCLANE moved do pass.

REP. CURTISS moved to amend page 2, line 7 after "more" inserting "before residential subdivision or other commercial development occurs". REP. HUENNEKENS felt subdivision is too restrictive. REP. CURTISS withdrew the motion.

REP. KEEDY moved to strike lines 6 and 7 after operation and to insert "longer than the complaining resident has been in possession of or commercial establishment has been in operation". The amendment carried.

REP. KEEDY moved to amend the title and page 2, line 2 after "the" striking the rest of the line and line 3 through "manure" and insert "normal operation thereof".

REP. EUDAILY asked for an example of this. REP. KEEDY replied not from daily farm operations, spraying, or flies.

The amendment carried.

REP. MCLANE moved do pass as amended.

REP. BENNETT felt the owner of the new place next to the farming operation is not being protected. It is being assumed every farmer will get along well with his neighbor. REP. KEEDY responded the second amendment would help eliminate cases where circumstances arise from abnormal operations.

REP. HANNAH felt this should not be tailored to one specific area. What about rifle ranges, baseball fields and airports? If there is a problem we are not doing our purpose if we don't address the whole problem.